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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4022

11 **DAVID GUSTAV KALEMKIARIAN**

12 **5211 Franklin Avenue**
13 **Los Angeles, CA 90027**

A C C U S A T I O N

14 **Original Pharmacist License No. RPH 41864**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about August 2, 1988, the Board of Pharmacy issued Original Pharmacist
22 License Number RPH 41864 to David Gustav Kalemkiarian (Respondent). The Original
23 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on July 31, 2012, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

STATUTES

4. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 in relevant part provides the Board may discipline a licensee for unprofessional conduct:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

...

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board."

6. Section 4059 in pertinent part prohibits any person from furnishing any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

7. Section 4022 defines "dangerous drug" to include any prescription drug:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner

1 licensed to use or order use of the device.

2 (c) Any other drug or device that by federal or state law can be lawfully
3 dispensed only on prescription or furnished pursuant to Section 4006."

4 8. Section 4081 provides recordkeeping rules for dangerous drugs and holds
5 pharmacists-in-charge jointly responsible for maintaining records and current inventories of these
6 drugs:

7 "(a) All records of manufacture and of sale, acquisition, or disposition of
8 dangerous drugs or dangerous devices shall be at all times during business hours open
9 to inspection by authorized officers of the law, and shall be preserved for at least
10 three years from the date of making. A current inventory shall be kept by every
11 manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician,
12 dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or
13 establishment holding a currently valid and unrevoked certificate, license, permit,
14 registration, or exemption under Division 2 (commencing with Section 1200) of the
15 Health and Safety Code or under Part 4 (commencing with Section 16000) of
16 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous
17 drugs or dangerous devices.

18 (b) The owner, officer, and partner of any pharmacy, wholesaler, or
19 veterinary food-animal drug retailer shall be jointly responsible, with the
20 pharmacist-in-charge or representative-in-charge, for maintaining the records and
21 inventory described in this section.

22 (c) The pharmacist-in-charge or representative-in-charge shall not be
23 criminally responsible for acts of the owner, officer, partner, or employee that violate
24 this section and of which the pharmacist-in-charge or representative-in-charge had no
25 knowledge, or in which he or she did not knowingly participate."

26 REGULATIONS

27 9. California Code of Regulations, title 16, section 1718 defines "current inventory" as
28 used in Section 4081, requiring licensees to be completely accountable for all dangerous drugs
they handle:

"'Current Inventory' as used in Sections 4081 and 4332 of the Business
and Professions Code shall be considered to include complete accountability for all
dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section
1304 shall be available for inspection upon request for at least 3 years after the date of
the inventory."

10. California Code of Regulations, title 16, section 1707.1 imposes a duty on pharmacies
and pharmacists to maintain patient medication profiles or patient medication records:

"(a) A pharmacy shall maintain medication profiles on all patients who
have prescriptions filled in that pharmacy except when the pharmacist has reasonable
belief that the patient will not continue to obtain prescription medications from that

pharmacy.

(1) A patient medication record shall be maintained in an automated data processing or manual record mode such that the following information is readily retrievable during the pharmacy's normal operating hours.

(A) The patient's full name and address, telephone number, date of birth (or age) and gender;

(B) For each prescription dispensed by the pharmacy:

1. The name, strength, dosage form, route of administration, if other than oral, quantity and directions for use of any drug dispensed;

2. The prescriber's name and where appropriate, license number, DEA registration number or other unique identifier;

3. The date on which a drug was dispensed or refilled;

4. The prescription number for each prescription; and

5. The information required by section 1717.

(C) Any of the following which may relate to drug therapy: patient allergies, idiosyncracies, current medications and relevant prior medications including nonprescription medications and relevant devices, or medical conditions which are communicated by the patient or the patient's agent.

(D) Any other information which the pharmacist, in his or her professional judgment, deems appropriate.

(2) The patient medication record shall be maintained for at least one year from the date when the last prescription was filled."

COST RECOVERY

11. Section 125.3 of the Code states, in pertinent part, that a Board may request an administrative law judge to direct a licensee found to have committed a violation or violations of a licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 **DANGEROUS DRUGS**

2 12. Viramune is a brand name of nevirapine, a medication used to treat human
3 immunodeficiency virus (HIV) infection. As a prescription drug, it is a dangerous drug pursuant
4 to Business and Professions Code section 4022.

5 13. Flomax is a brand name for tamsulosin, an alpha blocker used to treat an enlarged
6 prostate. As a prescription drug, it is a dangerous drug pursuant to Business and Professions
7 Code section 4022.

8 14. Zovirax is a brand name for acyclovir, a medication used to speed the healing of sores
9 or blisters in people with shingles, chicken pox or herpes. As a prescription drug, it is a
10 dangerous drug pursuant to Business and Professions Code section 4022.

11 15. Lactulose is a synthetic sugar used to treat constipation. As a prescription drug, it is a
12 dangerous drug pursuant to Business and Professions Code section 4022.

13 16. Epzicom is an anti-retroviral medication used to treat HIV. As a prescription drug, it is
14 a dangerous drug pursuant to Business and Professions Code section 4022.

15 17. Wellbutrin is a brand name for bupropion, an antidepressant. As a prescription drug,
16 it is a dangerous drug pursuant to Business and Professions Code section 4022.

17 18. Flonase is a brand name for fluticasone, an aerosol used to treat asthma. As a
18 prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

19 19. Crestor is a brand name for rosuvastatin, a statin used to lower cholesterol. As a
20 prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

21 20. Lamisil is a brand name for terbinafine an anti-fungal medication used to treat nail
22 infections. As a prescription drug, it is a dangerous drug pursuant to Business and Professions
23 Code section 4022.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct – Commission of an Act Involving Moral Turpitude, Dishonesty,
26 Fraud, Deceit or Corruption)**

27 21. Respondent is subject to disciplinary action for unprofessional conduct under Section
28 4301 subdivision (f) because he repeatedly falsified prescription records, patient records, and

claim forms, took dangerous drugs from a pharmacy where he was employed as the pharmacist-in-charge to distribute to a friend, and misappropriated insurance reimbursements due his employer, acts that constitute moral turpitude, dishonesty, fraud and deceit. The circumstances are as follows:

22. From 2009 to 2010, Respondent dispensed more than thirty prescriptions for a variety of dangerous drugs without a physician's authorization to C.S.¹, a friend of his. The following table shows the dates Respondent disbursed these drugs, the drugs dispensed, and the last name of the doctor who Respondent falsely claimed prescribed the listed drug:

Date	Drug Name	Doctor
7/1/2009	Viramune	Cohan
7/1/2009	Flomax	Cohan
7/1/2009	Zovirax	Cohan
7/1/2009	Lactulose	Cohan
8/1/2009	Viramune	Cohan
8/1/2009	Acyclovir	Cohan
8/1/2009	Lactulose	Cohan
8/1/2009	Epzicom	Cohan
8/1/2009	Wellbutrin	Cohan
8/1/2009	Flonase	Cohan
8/1/2009	Flomax	Cohan
9/1/2009	Viramune	Cohan
9/1/2009	Acyclovir	Cohan
9/1/2009	Lactulose	Cohan
9/1/2009	Epzicom	Cohan
9/1/2009	Wellburtin	Cohan

¹ The patient's initials are used in this accusation to protect the patient's privacy.

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9/1/2009	Flonase	Cohan
9/1/2009	Flomax	Cohan
11/20/2009	Lamisil	Cohan
12/20/2009	Lamisil	Cohan
12/1/2009	Viramune	Skiba
12/1/2009	Acyclovir	Skiba
12/1/2009	Lactulose	Skiba
12/1/2009	Epzicom	Skiba
12/1/2009	Wellbutrin	Skiba
12/1/2009	Flonase	Skiba
12/1/2009	Flomax	Skiba
1/27/10	Wellbutrin	Skiba
1/27/10	Epzicom	Skiba
1/27/10	Zovirax	Skiba
1/27/10	Viramune	Skiba
3/1/10	Wellbutrin	Skiba
3/1/10	Epzicom	Skiba

23. Respondent took these prescription drugs from Gateways Hospital Pharmacy, where he was serving as the pharmacist-in-charge, without following statutory, regulatory, or the pharmacy's own procedures for recordkeeping for either the drugs or patient C.S's medical records.

24. After dispensing these drugs to C.S., Respondent falsified insurance reimbursement forms for C.S. to submit to C.S's insurance company, Anthem Blue Cross. On these falsified forms he claimed C.S. had obtained the drugs from another pharmacy, Skinners Pharmacy, where Respondent did not work, and from which the drugs had not come.

25. When C.S. received reimbursement checks from Anthem Blue Cross, Respondent arranged to have C.S. endorse the checks to him, depositing the checks into his own personal bank account.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Knowingly Making or Signing False Documents or Certificates)

26. Respondent is subject to disciplinary action under Section 4301 subdivision (g) for knowingly making or signing false documents or certificates by committing the following acts and the acts alleged in paragraphs 22 through 25 above, realleged and incorporated herein:

A. When questioned by a Board investigator about the acts alleged above, Respondent made a series of false statements orally and in writing. In conversation, he falsely claimed:

- He had taken the drugs he gave his friend from Community Hospital, another hospital where he had worked, when, in fact, he had diverted these drugs from Gateway Hospital pharmacy;
- Community Hospital was no longer in business, when, in fact, it was doing business under a new name;
- Dr. Cohan (or Cohen) had authorized some of his friend's prescriptions, when Dr. Cohan had not authorized the prescriptions shown in the table in paragraph 22 above; and
- Dr. Skiba had authorized the rest of his friend's prescriptions, when, in fact, approximately 13 of the prescription drugs given to Respondent's friend had not been authorized by Dr. Skiba (illustrated in the table in paragraph 22 above.)

B. Respondent compounded his lies in a sworn statement executed on May 26, 2010. In this sworn statement he reiterated the false claim that all of the prescriptions he filled for his friend were authorized by physicians and also falsely claimed he had reimbursed Community Hospital from the insurance reimbursement checks he received.

C. In short, Respondent made or signed the following false documents or certificates:

1. Prescription records claiming that doctors had authorized prescriptions they never authorized.
2. Insurance reimbursement forms submitted to insurer Anthem Blue Cross that also claimed that doctors had authorized the prescriptions they never authorized and claimed that prescription drugs Respondent gave to his friend came from Skinners Pharmacy when they had

1 actually come from Gateways Hospital Pharmacy. The false forms were submitted on multiple
2 occasions, including July 1, 2009, August 1, 2009, September 1, 2009, and November 20, 2009.

3 3. The sworn statement given to the Board on May 26, 2010 claiming he
4 reimbursed Community Hospital for the insurance reimbursements he pocketed and claiming
5 Doctors Skiba and Cohan had authorized the unauthorized prescriptions.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Subverting Investigation)**

8 27. By committing the acts alleged in paragraphs 22 through 26, realleged and
9 incorporated herein, Respondent is subject to disciplinary action under Section 4301 subdivision
10 (q) for subverting the Board's investigation by repeatedly lying to a Board investigator who was
11 investigating his diversion of drugs and false insurance claims.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Furnishing without a Prescription)**

14 28. By committing the acts alleged in paragraphs 22 through 26, realleged and
15 incorporated herein, Respondent is subject to disciplinary action under section 4059 subdivision
16 (a) for repeatedly furnishing prescriptions for a variety of dangerous drugs without a physician's
17 authorization to C.S., a friend of his.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Failure to Maintain Drug and Patient Records)**

20 29. Respondent is subject to disciplinary action under Section 4301 subdivisions (j)
21 (violating any statute pertaining to dangerous drugs) and (o) (violating any law or regulation
22 governing pharmacy) for violating the recordkeeping requirements of Section 4081 (dangerous
23 drugs) and Title 16 of the California Code of Regulations sections 1718 (inventory of dangerous
24 drugs) and 1707.1 (patient medication records) by committing the following acts and the acts
25 alleged in paragraphs 22 through 26 above, realleged and incorporated herein:

26 A. Respondent failed to maintain records of the sale or disposition of the dangerous
27 drugs listed in the table accompanying paragraph 22 above that he took from Gateways Hospital
28

1 Pharmacy. He did not update the pharmacy's current inventory to reflect the disposition of those
2 drugs, nor did he maintain complete accountability for the handling of these dangerous drugs.

3 B. He also failed to document his giving, selling, or disposition of all of the dangerous
4 drugs he gave to patient C.S. in C.S.'s medication profile or patient medication records at
5 Gateways Hospital Pharmacy. His failure to do so was not based on a reasonable belief that C.S.
6 would not continue to obtain prescription medications from that pharmacy.

7 C. Although Respondent claimed at various times that he had obtained patient's C.S.'s
8 drugs from Skinners Pharmacy or Community Hospital, he did not document these withdrawals
9 from these pharmacies, nor could he have done so, since he was not working at those pharmacies
10 when he diverted the drugs.

11 **PRAYER**

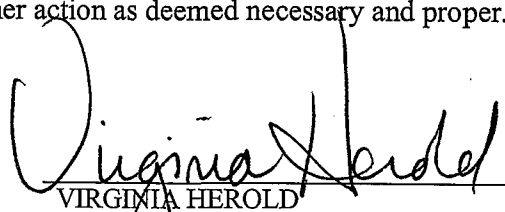
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Original Pharmacist License Number RPH 41864, issued to
15 David Gustav Kalemkarian;

16 2. Ordering David Gustaf Kalemkarian to pay the Board of Pharmacy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: 6/21/11

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23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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